

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICK JOHNSON,

Defendant.

Case No. 1:23-cr-40

HON. JANE M. BECKERING

United States District Judge

**DEFENDANT RICK JOHNSON’S MOTION FOR DOWNWARD DEPARTURE
AND DOWNWARD VARIANCE**

1. Downward Departure.

The Presentence Report indicates there are no factors to support a departure under the sentencing guidelines. Mr. Johnson disagrees. Pursuant to U.S.S.G. §2B1.1, application note 21(C). This paragraph states: “There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.”

Here, the estimated guideline range, however it is calculated, substantially overstates the seriousness of the offense. While it is true that Mr. Johnson betrayed the public trust vested in him, a years-long custodial period is not proper. As in the companion sentencing memorandum, Mr. Johnson was not an elected official, he was not a high-level decision-maker, and had no ability to unilaterally make decisions on behalf the MMLB, LARA, or the State of Michigan.

There is no evidence that Mr. Johnson's votes in favor of applicants that provided benefits to him resulted in harm as defined by the guidelines. In other words, the government has not established that Mr. Johnson's votes resulted in harm to another applicant. And it is doubtful that Mr. Johnson's votes were out-come determinative because he was only one of five members of the MMLB.

While it cannot be disputed that Mr. Johnson's poor judgment is what brings him before the Court, there are many reasons to conclude that a long-term custodial period is not proper.

2. Downward Variance.

The sentencing factors of 18 U.S.C. § 3553(a) require a sentence that is sufficient but not greater than necessary. "[A] defendant's sentence is substantively unreasonable if it is too long. *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). A sentence is too long when it is 'greater than necessary' to achieve the sentencing goals set forth in 18 U.S.C. § 3553(a)(2)." *United States v. Lee*, 974 F.3d 670, 676 (6th Cir. 2020). The Court may consider the § 3553(a) factors, along with other facts related to a defendant or the case. As such, all considerations should be accounted for to impose a reasonable sentence.

The Presentence Report indicates there are no factors in support of a downward variance pursuant to the Section 3553(a) factors. Mr. Johnson disagrees. He is a husband, father, friend, community member, and public servant. Mr. Johnson engaged in public service for many years, including as Speaker of the House for the Michigan House of Representatives. Mr. Johnson's respect and commitment to each

of these roles is well-documented in letters of support separately provided to the Court. The letters are illustrative of the fact that people close to Mr. Johnson, even when aware of this matter, still hold a very high opinion of him.

There are other factors that support a downward variance. Mr. Johnson is 70 years old. He suffers from high blood pressure and other conditions, some of which require regular medical treatment and monitoring. He does not have a single criminal history point. Given the nature of the offense and lack of criminal history points, Mr. Johnson may otherwise be eligible for a 2-level decrease in light of the Federal Sentencing Commission's recent voting on amendments to the guidelines.¹ Accordingly, there are ample bases to vary downward.

CONCLUSION

WHEREFORE, Defendant Rick Johnson respectfully requests that this Court impose a sentence consistence with the sentencing guidelines, Mr. Johnson's history of community service, his cooperation with the government, and his acceptance of responsibility.

DONDZILA LAW, PLLC

Date: September 14, 2023

By: /s/ Nicholas V. Dondzila
Nicholas V. Dondzila (P73937)
Attorneys for Defendant Johnson
7125 Headley Street
P.O. Box 728
Ada, MI 49301
(616) 970-0931
nickdondzila@gmail.com

¹ https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202308_prelim-retro.pdf